



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**MR. DOUGLAS M. WHEELING
FOR**

**AAMCO TRANSMISSIONS OF CHESTER and SURROUNDING
PROPERTY**

EPA ID No. VAD988224960

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Mr. Douglas Wheeling, regarding Aamco Transmissions of Chester and surrounding property, located at 12341 Jefferson Davis Highway, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aamco" means Aamco Transmissions of Chester, the fictitious name of the business located at 12341 Jefferson Davis Highway in Chester, VA.
2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
3. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-80-120(A).

4. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Facility" or "Site" means the Aamco Transmissions of Chester shop and surrounding property located at 12341 Jefferson Davis Hwy in Chester, Virginia.
8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
9. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
10. "Mr. Wheeling" means Mr. Douglas M. Wheeling, currently a resident of Chesterfield, Virginia. Mr. Wheeling is a "person" within the meaning of Va. Code § 10.1-1400.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
16. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Douglas M. Wheeling owns the property located at 12341 Jefferson Davis Highway in Chester, Virginia. Aamco, an automotive service shop providing transmission repair as well as other minor services such as oil changes, is located on the property. Mr. Wheeling leases the property to the owner of Aamco. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Aamco submitted a RCRA Subtitle C Site Identification Form, received March 17, 1993, which gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. Aamco was issued EPA ID No. VAD988224960 for the Facility. In a subsequent form received November 13, 2013, Aamco gave notice as a CESQG of hazardous waste at the Facility. Aamco is also a used oil generator and a small quantity handler (SQH) of universal waste.
3. At the Facility, Aamco generates spent aerosol cans of brake cleaner and degreaser, oily rags, oil-based parts washer solution, aqueous based parts washer solution, antifreeze, used transmission fluid and engine oil, and lead acid batteries which are solid wastes. Aamco generates two waste streams that are potentially hazardous that have not been characterized at the Facility, specifically the spent aerosol cans and parts washer solution. These wastes are accumulated in tanks and containers at the Facility after its generation.
4. On October 3, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. An area of black-stained ground at the rear of the Facility estimated to be approximately 60 feet in length by 40 feet in width; black-stained ground on the south perimeter of the Facility property and black staining of the Facility foundation along the south wall; black-stained ground estimated to be at least four feet in length by four feet in width in the southeast corner of the Facility property; distressed vegetation in and around these areas; free liquids accumulated on the floor in areas stained black along the south and east walls of the interior of the Facility.

9 VAC 20-60-279 which incorporates 40 CFR § 279.22(d) by reference, states that “[u]pon detection of a release of used oil to the environment that is not subject to the requirements of part 280, subpart F of this chapter and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the release is located, a generator must perform the following cleanup steps: (1) Stop the release; (2) Contain the released used oil; (3) Clean up and manage properly the released used oil and other materials; and (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”

9 VAC 20-81-40 (B) states “[n]o person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter.”

9 VAC 20-81-40 (C) states “[i]t shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.”

9 VAC 20-81-40 (D) states “[a]ny person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.”

- b. There were three unlabeled above-ground storage tanks (ASTs) and numerous unlabeled containers stated by Aamco staff to contain used oil.

9 VAC 20-60-279 which incorporates 40 CFR § 279.22(c) by reference, states “[l]abels. (1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’”

- c. Aamco staff stated that used aerosol cans are discarded into the trash when nearly empty. Aamco staff also stated that the used parts washer solution drained from the stand alone washing unit used to clean transmission cases was accumulated in containers stored outside in the rear of the Facility and was not shipped off-site for disposal. The Facility staff did not have record that they had conducted a hazardous waste determination on these two waste streams.

9 VAC 20-60-262 which incorporates 40 CFR § 262.11 by reference, states “[a] person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4.; (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261.; (c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the

Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used; (d) If the waste is determined to be hazardous, the generator must refer to parts 261, 264, 265, 266, 267, 268, and 273 of this chapter for possible exclusions or restrictions pertaining to management of the specific waste.”

5. On November 7, 2013, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2013-10-PRO-601 to Mr. Wheeling for the violations described in C(4) above.
6. On November 21, 2013, Department staff met with Mr. Wheeling and Mr. Guardino to discuss the violations cited in the NOV. Mr. Wheeling stated he had hired an environmental remediation contractor on October 15, 2013, and sampling for a site characterization report was underway.
7. On January 16, 2014, remediation of the Facility began. A vacuum truck was used to pump a total of 1,900 gallons of petroleum contaminated water from the affected area. Used skid loader soils were excavated and placed in a dump truck for disposal at Reco Biotechnology. The excavated area was 20 feet long by 50 feet wide.
8. On January 20, 2014, Mr. Wheeling submitted a Site Characterization Report (SCR) for Department review. On March 12, 2014, the Department requested additional remediation.
9. On June 19, 2014, Mr. Wheeling conducted additional remediation and sampling and submitted an adjusted SCR on June 24, 2014, for Department review. The SCR concluded and the Department concurred that remediation measures were complete at the Facility.
10. On May 18, 2017, DEQ staff visited the Facility and observed that the above ground storage tanks were labeled. DEQ staff also observed 4 drums containing an unknown substance at the rear of the building.
11. Based on the results of September 30 and October 3, 2013, inspections, the November 21, 2013, meeting, and the documentation submitted on January 20, 2014, and June 19, 2014, the Board concludes that Mr. Wheeling has violated 9 VAC 20-60-279, 40 CFR § 279.22(d), 9 VAC 20-81-40(B), 9VAC 20-81-40(C), 9VAC 20-81-40(D), 40 CFR § 279.22(c), 9 VAC 20-60-262 and 40 CFR § 262.11 as described in paragraph C(4), above.
12. Mr. Wheeling has submitted documentation that verifies that the violation described in paragraph C(4)(a), above, has been corrected.
13. On May 18, 2017, DEQ staff conducted a status check of the Aamco and surrounding property and verified that the violation described in paragraph C(4)(b), above, has been

corrected.

14. In order for the Facility to return to compliance, DEQ staff and Mr. Wheeling have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Mr. Wheeling, and Mr. Wheeling agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,875.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
3. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

4. Mr. Wheeling shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Respond Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Wheeling for good cause shown by Mr. Wheeling, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Wheeling admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein
4. Mr. Wheeling consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Wheeling declares he has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mr. Wheeling to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Wheeling shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Wheeling shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Wheeling shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Mr. Wheeling intends to

assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Wheeling.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Mr. Wheeling has completed all of the requirements of the Order;
 - b. Mr. Wheeling petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Wheeling.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Wheeling from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mr. Wheeling and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Wheeling or an authorized representative of Mr. Wheeling.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By his signature below, Mr. Wheeling voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2017.

Jefferson D. Reynolds,
Director, Division of Enforcement
Department of Environmental Quality



Mr. Douglas M. Wheeling voluntarily agrees to the issuance of this Order.

Date: 6-6-17 By: [Signature], OWNER
(Person) (Title)
Mr. Douglas M. Wheeling

Commonwealth of Virginia

City/County of Richmond

The foregoing document was signed and acknowledged before me this 6 day of

June, 2017, by Mr. Douglas M. Wheeling who is owner of the property located at

12341 Jefferson Davis Hwy, Chester, Virginia.

Kathy Steers
Notary Public

7610776
Registration No.

My commission expires: 5/31/18

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Mr. Wheeling shall:

1. No later than 30 days from the effective date of the Order, submit to the Department documentation for the removal of the 4 drums located at the rear of the Aamco building.
2. No later than 30 days from the effective date of the Order, submit to the Department documentation demonstrating that a hazardous waste determination has been conducted on the 4 drums located at the rear of the Aamco building.
3. Unless otherwise specified in this Order, Mr. Wheeling shall submit all requirements of Appendix A of this Order to:

**Kristen Sadtler
VA DEQ - Central Office
629 East Main Street
Richmond, Virginia 23219
e-mail: Kristen.Sadtler@deq.virginia.gov**

